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11 Attorneys for Defendant

12 BANK OF AMERICA, N.A.

13
14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 CALIFORNIA PACIFIC BANK, a California
banking corporation,

18 Plaintiff,

19 vs.

20 BANK OF AMERICA, N.A., and DOES 1-20,
21 inclusive,

22 Defendants.

Case No.: C07-03330 JCS

**AFFIDAVIT OF MICHAEL E. EVANS
IN SUPPORT OF BANK OF
AMERICA'S MOTION TO DISMISS**

Date: September 21, 2007

Time: 9:30 a.m.

Room: A, 15th Floor

Judge: Joseph C. Spero

23
24 Attached hereto is the Affidavit of Michael E. Evan, and related exhibits.
25
26
27
28

1 DATED: August 15, 2007

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44 West Flagler Street
Miami, FL 33130
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By: /s/ J. Randolph Liebler
J. RANDOLPH LIEBLER
Florida Bar No. 507954
CHRISTOPHER M. DRURY
Florida Bar No. 796751

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA PACIFIC BANK, a California
banking corporation,

Plaintiff,

vs.

BANK OF AMERICA, N.A., and DOES 1-20,
inclusive,

Defendants.

Case No.: C07-03330 JCS

AFFIDAVIT OF MICHAEL E. EVANS

STATE OF Pennsylvania)
COUNTY OF Lehigh :ss

BEFORE ME, the undersigned authority did personally appear Michael E. Evans,
who first being duly sworn, deposes and says:

1. I am over eighteen (18) years of age, competent to testify, and have
personal knowledge of the matters herein.

2. I am employed by BANK OF AMERICA, N.A. ("BANK OF
AMERICA"), as Vice President. In that position, my duties include supervising and directing the
affairs of BANK OF AMERICA as they relate to certain standby letter of credit transactions,
including Irrevocable Standby Letter of Credit No. 68017913 in the amount of \$412,080.00,
which was issued by BANK OF AMERICA on March 30, 2007. In my aforementioned capacity,

I am also the custodian of the business records of BANK OF AMERICA as they relate to certain documentary credit transactions, including Irrevocable Standby Letter of Credit No. 68017913.

3. This affidavit is based upon my personal knowledge of the facts as stated herein or those facts apparent in correspondence, memoranda, reports, records and data compilations ("Records") within the possession, custody, and control of BANK OF AMERICA. The Records are true and accurate documentary representations of the activities accomplished and the communications received with respect to the transactions in which BANK OF AMERICA participates. I routinely rely on the Records in the usual course of my business and the business of BANK OF AMERICA.

4. I am acquainted with the Records relating to Irrevocable Standby Letter of Credit No. 68017913.

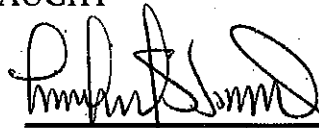
5. I have personal knowledge with respect to Irrevocable Standby Letter of Credit No. 68017913.

6. The Records relating to Irrevocable Standby Letter of Credit No. 68017913 include S.W.I.F.T. messages between BANK OF AMERICA and CALIFORNIA PACIFIC BANK.

7. Composite Exhibit "B" of BANK OF AMERICA's Motion to Dismiss includes true and correct copies of all S.W.I.F.T. messages exchanged between BANK OF AMERICA and CALIFORNIA PACIFIC BANK with respect to Irrevocable Standby Letter of Credit No. 68017913 from May 29, 2007 through June 1, 2007.

8. Exhibit "C" of BANK OF AMERICA's Motion to Dismiss is a true and correct copy of the original version of Irrevocable Standby Letter of Credit No. 68017913 in the amount of \$412,080.00, which was issued by BANK OF AMERICA on March 30, 2007.

FURTHER AFFIANT SAYETH NAUGHT

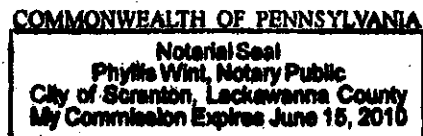

Affiant, MICHAEL E. EVANS

STATE OF Pennsylvania
COUNTY OF Lackawanna :SS

The foregoing instrument was acknowledged before me this 3 day of August, 2007, by Michael E. Evans, who is personally known to me or who has produced as identification and who did take an oath.

Phyllis Wint
Print Name: PHYLLIS WINT
Notary Public - State of Pennsylvania

My Commission Expires: June 15, 2010



INCOMING SWIFT MESSAGE

05/29/07

SENDER SWFT ADDRESS	RECEIVER SWFT ADDRESS	MSG TYPE	L/C ID	DOC TRACK ID	STATUS	ERROR FOUND
CASF	NYSW	742	00000068017913	00000011821622	UPL	YES
STATUS DESCRIPTION : TRANSACTION UPLOADED						

MESSAGE RECEIVED FROM :
CALIFORNIA PACIFIC BANK
601 MONTGOMERY ST.

SAN FRANCISCO CA 94111-2603

:20 : CLAIMING BANK'S REFERENCE
: : 18251

:21 : DOCUMENTARY CREDIT NUMBER
: : 68017913

:31C: DATE OF ISSUE
: : 070330

:52D: ISSUING BANK
: : BANK OF AMERICA, N.A.
: : 1 FLEET WAY
: : PA6-580-02-30
: : SCRANTON, PA 18507-1999

:32B: PRINCIPAL AMOUNT CLAIMED
: : USD412080,00

:34B: TOTAL AMOUNT CLAIMED
: : USD412080,00

:72 : SENDER TO RECEIVER INFORMATION
: : ATTN:GLOBAL TRADE OPERATIONS
: : STANDBY UNIT
: : PLS REMIT TO OUR A/C 121038265.(ABA)
: : WITH FRB S.F. QUOTING OUR REF

CF



SWIFT 799 - SWIFT FREE NARRATIVE

:TO : RECEIVING PARTY NAME AND ADDRESS
: : CASF
: : LOCE
: : S
: : NOA
: : 000000000000.00
: :
: :
: : CALIFORNIA PACIFIC BANK
: : 601 MONTGOMERY ST
: : SAN FRANCISCO CA 94111-2603
: :
:20 : SENDERS REFERENCE
: : 68017913
:21 : RELATED REFERENCE
: : 18251
:79 : NARRATIVE
: : /30 VALUE DATE/070601
: : /32 AMOUNT/
: : NOA 0.00
: : URGENT! URGENT! URGENT!
: : RE: DRAWING UNDER LETTER OF CREDIT
: : YOUR REFERENCE - 18251
: : OUR REFERENCE - 68017913
: : THIS IS BANK OF AMERICA'S NOTIFICATION
: : TO YOU OF DISCREPANCIES, WHICH WE HAVE
: : NOTED UNDER YOUR DRAWING REFERENCED ABOVE
: : IN THE AMOUNT OF USD 412,080.00:
: : 1. BENEFICIARY'S STATEMENT NOT PRESENTED
: : PER LETTER OF CREDIT TERMS AND
: : CONDITIONS.
: : WE ARE CONVEYING THESE DISCREPANCIES TO
: : YOU IN ACCORDANCE WITH UCP500 OF THE
: : INTERNATIONAL CHAMBER OF COMMERCE, WHICH
: : GOVERNS AND CONTROLS DOCUMENTARY LETTERS
: : OF CREDIT. DOCUMENTS REMAIN AT YOUR RISK
: : AND DISPOSAL.
: : REGARDS,
: : SCRANTON STANDBY UNIT

WP : SWIFT 00000011832773 0000006801791379901

REVIEW

1 OF 2000

:20 : TRANSACTION REFERENCE NUMBER

: : 18251

:21 : RELATED REFERENCE

: : 68017913

:79 : NARRATIVE

: : ATTN: GLOBAL TRADE OPERATIONS

: : STANDBY UNIT

: : PER YOUR MR. MIKE EVANS TELEPHONE

: : REQUEST THIS MORNING, JUNE 1, 2007,

: : WE ISSUE THIS STATEMENT:

: : WE HEREBY CLAIM USD412,080.00 UNDER YOUR

: : STANDBY LETTER OF CREDIT NO.68017913 DUE TO

: : QIBEE FAILURE TO PAY INDEBTNESS.

: : PLS REMIT USD412,080.00 TO OUR A/C 121038265

: : WITH FED RESERVE BANK, SAN FRANCISCO QUOTING

: : OUR REF 18251

cust. PDA FL005562674490

WP : SWIFT 00000011832773 0000006801791379901

REVIEW 1201 OF 2000

: : QIBEE FAILURE TO PAY INDEBTNESS.

: :

: : PLS REMIT USD412,080.00 TO OUR A/C 121038265

: : WITH FED RESERVE BANK, SAN FRANCISCO QUOTING

: : OUR REF 18251

: :

: : REGDS,

: : INTL DEPT

: :

SWIFT 799 - SWIFT FREE NARRATIVE

:TO : RECEIVING PARTY NAME AND ADDRESS
: : CASF
: : LOCE
: : S
: : NOA
: : 000000000000.00
: :
: :
: : CALIFORNIA PACIFIC BANK
: : 601 MONTGOMERY ST
: : SAN FRANCISCO CA 94111-2603
: :
:20 : SENDERS REFERENCE
: : 68017913
:21 : RELATED REFERENCE
: : 18251
:79 : NARRATIVE
: : /30 VALUE DATE/070604
: : /32 AMOUNT/
: : NOA 0.00
: : URGENT! URGENT! URGENT!
: : RE: DRAWING UNDER LETTER OF CREDIT
: : YOUR REFERENCE - 18251
: : OUR REFERENCE - 68017913
: : PLEASE BE ADVISED THAT WE HAVE BEEN
: : SERVED WITH A TEMPORARY RESTRAINING ORDER
: : RESTRICTING US TO HONOR YOUR CLAIM AT
: : THIS TIME. IN ADDITION, PLEASE NOTE THAT
: : CALIFORNIA PACIFIC BANK HAS ALSO BEEN
: : NAMED AS A DEFENDANT. THE ACTION WAS
: : ISSUED IN THE CIRCUIT COURT OF THE SIXTH
: : JUDICIAL CIRCUIT IN AND FOR PINELLAS
: : COUNTY, STATE OF FLORIDA, UCN REF:
: : 07-5147-C1-13.
: :
: : REGARDS,
: : SCRANTON STANDBY UNIT

EXHIBIT C

(A)

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: MARCH 30, 2007

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68017913

ADVISING BANK
CALIFORNIA PACIFIC BANK
601 MONTGOMERY ST.
SAN FRANCISCO, CA 94111-2603

ISSUING BANK
BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
CALIFORNIA PACIFIC BANK
250 MONTGOMERY STREET
SUITE 500
SAN FRANCISCO, CA 94104

APPLICANT
BULLARD ELECTRONICS LLC
2325 ULMERTON RD.
SUITE 20
CLEARWATER, FL 33762

AMOUNT
NOT EXCEEDING USD 412,080.00
NOT EXCEEDING FOUR HUNDRED
TWELVE THOUSAND EIGHTY AND
00/100'S US DOLLARS.

EXPIRATION
JUNE 29, 2007
AT OUR COUNTERS

WE HEREBY OPEN OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER 68017913 IN YOUR FAVOR.

CREDIT AVAILABLE WITH BANK OF AMERICA, N.A. BY PAYMENT OF BENEFICIARY'S DRAFT(S) AT SIGHT DRAWN ON BANK OF AMERICA, N.A..

DRAFTS MUST BE ACCOMPANIED BY:

1. THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY.
2. YOUR STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER STATING THAT "WE HEREBY CLAIM USD _____ UNDER YOUR STANDBY LETTER OF CREDIT NO. 68017913 DUE TO QIBEE FAILURE TO PAY INDEBTNESS."

REIMBURSEMENT CLAIMS MADE BY AUTHENTICATED SWIFT ARE ACCEPTABLE IN WHICH CASE DRAFT AND SIGNED STATEMENTS ARE NOT REQUIRED.

IT IS A FURTHER CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT IS NOT OPERATIVE UNTIL QIBEE, INC. HAS ISSUED TO NBG, LLC, THEIR IRREVOCABLE LETTER OF CREDIT IN THE AMOUNT OF \$8,225,280.00 USD AND A PURCHASE ORDER IN THE AMOUNT OF \$8,225,280.00 USD. BULLARD

COPY

BANK OF AMERICA - CONFIDENTIAL

PAGE: 2

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68017913

ELECTRONICS OR QIBEE, INC. MUST NOTIFY BANK OF AMERICA, N.A. BY WRITTEN NOTICE ON THEIR LETTERHEAD AND REFERENCING THIS LETTER OF CREDIT NO. 68017913, THAT SUCH IRREVOCABLE LETTER OF CREDIT HAS BEEN ISSUED AND A COPY OF THE PURCHASE ORDER AND LETTER OF CREDIT HAS BEEN SENT TO BANK OF AMERICA, N.A., WE WILL THEN ISSUE OUR FORMAL AMENDMENT MAKING THIS LETTER OF CREDIT OPERATIVE.

PARTIAL DRAWINGS: ARE ALLOWED

ALL BANKING CHARGES IN CONNECTION WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

DRAFT(S) MUST STATE "DRAWN UNDER BANK OF AMERICA, N.A., STANDBY LETTER OF CREDIT NUMBER 68017913 DATED MARCH 30, 2007."

DRAFT(S) AND DOCUMENTS SHALL BE PRESENTED AT OUR OFFICES AT BANK OF AMERICA, N.A., ONE FLEET WAY, SCRANTON, PA 18507 ATTN: GLOBAL TRADE OPERATIONS, STANDBY UNIT.

WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED ON PRESENTATION.

COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING AND SHALL BE ADDRESSED TO US AT, ONE FLEET WAY, SCRANTON, PA 18507, ATTN: GLOBAL TRADE OPERATIONS - STANDBY UNIT, PHONE: 1-800-370-7519, SPECIFICALLY REFERRING TO THE NUMBER OF THIS LETTER OF CREDIT.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-370-7519 .

SENT VIA SWIFT700

AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 2 PAGE(S).

COPY